

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
(U 39 E) for Authority to Increase Revenue
Requirements to Recover the Costs to Replace
Steam Generators in Units 1 and 2 of the Diablo
Canyon Power Plant.

Application 04-01-009
(Filed January 9, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING
DENYING MOTION TO STRIKE AND GRANTING IN PART
MOTIONS TO FILE UNDER SEAL**

On August 20, 2004, Pacific Gas and Electric Company (PG&E) filed a motion to strike the pre-filed testimonies of David Schlissel, on behalf of The Utility Reform Network, Truman Burns, on behalf of the Office of Ratepayer Advocates, and James Weil, on behalf of Aglet Consumer Alliance as they relate to whether PG&E could or should have filed suit against Westinghouse to seek compensation for steam generator degradation. PG&E also filed a motion to have its motion to strike kept under seal. On August 23, 2004, PG&E filed a motion for a protective order regarding materials related to this issue.

PG&E asserts that the testimonies do not set forth a sufficient legal or factual basis for any assumed recovery from Westinghouse. PG&E also asserts that the parties are attempting to put it in a situation where, if PG&E believes a suit is not warranted, it would be condemned for making such arguments in this forum because the record could be used by Westinghouse to oppose a suit if one is filed.

The issue is whether PG&E should be ordered to file suit, and/or whether an award in such a suit should be imputed. Since this is relevant to the net cost of the project, I will not strike the testimonies. However, PG&E has the right to defend itself. If the Commission were to order PG&E to file suit, any briefs, exhibits or testimony regarding the matter in this proceeding may be discoverable by Westinghouse.

PG&E's motion focuses on whether the parties have demonstrated that PG&E should have filed suit. It is unclear why these arguments, since the parties' testimonies were not filed under seal, should be granted confidential treatment. However, there may be portions of the motion that warrant confidential treatment. Therefore, PG&E shall be prepared to identify the portions of its motion that warrant confidential treatment at the first day of hearings. As an alternative, it may prepare a redacted version of its motion that could be made public. Therefore, PG&E's request that its motion to strike these testimonies be kept under seal will be addressed in the evidentiary hearings.

PG&E may request confidential treatment of any other documents related to this matter that are introduced in this proceeding. However, I expect to grant confidential treatment only to those portions of documents that merit such treatment. In addition, PG&E may request that a portion of the evidentiary hearings in this proceeding related to this matter be closed, and the transcript produced under seal. The issue of closed hearings, and who will be allowed to attend, will be addressed on the first day of evidentiary hearings if such a request is made.

Therefore, **IT IS RULED** that:

1. The motion of Pacific Gas and Electric Company (PG&E), filed on August 20, 2004, to strike the pre-filed testimonies concerning litigation against

Westinghouse prepared by David Schlissel, on behalf of The Utility Reform Network, Truman Burns, on behalf of the Office of Ratepayer Advocates, and James Weil, on behalf of Aglet Consumer Alliance is denied.

2. The motion of PG&E, filed on August 20, 2004, to have the above motion kept under seal will be further addressed on the first day of evidentiary hearings.

3. To the extent that any motion for confidential treatment is granted in this proceeding, it will be granted for two years from the effective date of a final decision in this proceeding, unless otherwise specified, or on the further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

4. If PG&E believes that further protection of information granted confidential treatment is needed, it may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission's rules may then provide. This motion shall be filed no later than one month before the expiration date.

5. The motion of PG&E, filed on August 23, 2004, for a protective order is granted in part as set forth below, and otherwise denied.

6. PG&E may request confidential treatment of any documents related to possible litigation against Westinghouse that are introduced in this proceeding. In addition, PG&E may request that a portion of the evidentiary hearings in this proceeding related to this matter be closed, and the transcript produced under seal.

7. PG&E may require parties other than ORA to sign a nondisclosure agreement in order to have access to confidential materials.

Dated September 16, 2004, at San Francisco, California.

/s/ JEFFREY P. O'DONNELL

Jeffrey P. O'Donnell
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Denying Motion to Strike and Granting in Part Motions to File Under Seal on all parties of record in this proceeding or their attorneys of record.

Dated September 16, 2004, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.